

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

FIRST SOUTH FARM CREDIT ACA,)
vs.)
Plaintiff,)
vs.) Case No. 7:10-cv-1408-TMP
GREGORY T. SMITH, ROGER D.)
SANDERS, JOHN THOMAS KELLEY;)
KAHLUA CORPORATION, LLC;)
FOREST HILL CONSTRUCTION)
COMPANY, INC.; FOX FARMS, LLC;)
CARSON CREEK PROPERTIES, LLC;)
BIRD DOG ALABAMA, LLC)
Defendants.)

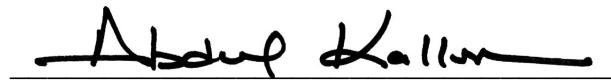
ORDER OF DISMISSAL WITHOUT PREJUDICE

On October 18, 2010, the magistrate judge filed a report and recommendation concerning the September 24, 2010, bankruptcy filing by defendants John Thomas Kelley, Kahlua Corporation LLC, Fox Farms LLC, Forest Hills Construction Company, Inc., and Bird Dog Alabama LLC. The magistrate judge recommended that the defendants be severed from this action and dismissed without prejudice to the right of the plaintiff to subsequently seek to petition for the retroactive reinstatement of these parties to this action in order to pursue any claim embraced herein not adjudicated in, or discharged by, the proceedings in the Bankruptcy Court. To date, no party has objected to the report and recommendation.

Having now carefully considered and reviewed *de novo* the report and recommendation, as well as all other materials in the court file, the court hereby ADOPTS the report and ACCEPTS the recommendation. Accordingly, it is ORDERED and ADJUDGED that the claims against defendants

John Thomas Kelley, Kahlua Corporation LLC, Fox Farms LLC, Forest Hills Construction Company, Inc., and Bird Dog Alabama LLC, be and hereby are SEVERED from the remaining claims and parties in this action, and are DISMISSED WITHOUT PREJUDICE to the right of the plaintiff to subsequently seek to petition for the retroactive reinstatement of these parties to this action in order to pursue any claim embraced herein not adjudicated in, or discharged by, the proceedings in the Bankruptcy Court. Such reinstatement, when allowed, should cause the filing date of any such claim so reinstated to relate back to the original filing date of this action.

DONE this 29th day of November, 2010.



ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE